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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/599,780

09/17/2007

Patrick Blin

17059

4444

25572 7590 03/29/2010  
MEADWESTVACO CORPORATION  
ATTN: IP LEGAL DEPARTMENT  
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EXAMINER

PERREAULT, ANDREW D

ART UNIT

PAPER NUMBER

3728

NOTIFICATION DATE

DELIVERY MODE

03/29/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docketadministrator@mwv.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/599,780	<b>Applicant(s)</b> BLIN, PATRICK	
	<b>Examiner</b> ANDREW PERREAULT	<b>Art Unit</b> 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 09 October 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 10-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 October 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>04/26/2007</u> . | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Election/Restrictions***

Applicant's election without traverse of Species C, Figures 3A-3D in the reply filed on 02/18/2010 is acknowledged.

Claims 10-18 stand.

***Drawings***

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: 330. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: 376, 374, 372, 364, 362, 358, 354, 326, 338. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the

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reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 10-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Huspeka et al. (5,699,959).

Re claim 10, Huspeka discloses a carton (figs 1-9) comprising an open top container (12 and in figs 7-9), a top closure (14 and in figs 7-9) connected to said open top container (12 and in figs 7-9) and at least one reinforced handle structure (12 fits onto 14 to form structure), said open top container and said top closure being formed from separate blanks respectively (separate in figs 1, 8, 9), wherein a first ply (top

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portion of 12 in fig 4; figs 8, 9) of said at least one reinforced handle structure is provided by said open top container (12; figs 8, 9), a second ply (inside portion of 50 in fig 5; figs 8, 9) of said at least one reinforced handle structure is provided by said top closure (14), and a third ply (portion at 46; figs 8, 9) of said at least one reinforced handle structure is provided by one of said top closure and said open top container (12; figs 8, 9).

Re claim 11, Huspeka discloses that said top closure (14) comprises a hinged handle panel (at 50) for providing said second ply (inside portion of 50 in fig 5), said handle panel is secured in flat face contact with an inner face of said first ply of said at least one reinforced handle structure (contact in fig 5).

Re claim 12, Huspeka discloses that said third ply (portion at 46) of said at least one reinforced handle structure is secured in flat face contact with an outer face of said first ply (outer face of to portion of 12 in figs 4, 5).

Re claim 13, Huspeka discloses that said third ply (portion at 46) of said at least one reinforced handle structure is hinged to said second ply (inside portion of 50 in fig 5) of said at least one reinforced handle structure, and wherein a hinged connection (at 50) between said second ply and said third ply provides a means for aligning said top closure with said open top container (fig 5).

Re claim 14, Huspeka discloses that said first ply (top portion of 12 in fig 4) of said at least one reinforced handle structure is disposed between, and in face contacting relationship with, said second and third plies (fig 5).

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Re claim 15, Huspeka discloses that said open top container (12; figs 8, 9) comprises a plurality of walls (walls of container in figs 8, 9), at least one of said walls of said open top container has a top flap (38) hingedly connected thereto and folded downwardly into said open top container (fig 4, 5, 9), wherein said top closure comprises an engaging tab (48; fig 9) for engaging said top flap such that said engaging tab is disposed in face contacting relationship with at least one of said at least one wall and said top flap (fig 9) to lock said top closure at a recessed position below a top of said open top container (connection between the top and container in fig 9 performs the intended use of locking).

Re claim 16, Huspeka discloses a two-part blank for forming a carton, said blank comprising a first part for forming an open top container and a second part separate from said first part to form a top closure of said open top container, wherein said first and second part are provided with panels for forming at least one reinforced handle structure when the carton is erected, said at least one reinforced handle structure is of at least three ply construction, a first ply of said at least one reinforced handle structure is provided by said first part, a second ply of said at least one reinforced handle structure is provided by said second part, and a third ply of said at least one reinforced handle structure is provided by one of said first and second parts.

Re claim 17, Huspeka discloses that said first part comprises a plurality of walls, said first ply of said at least one reinforced handle structure being provided by one of said walls of said first part.

Re claim 18, Huspeka discloses that said second part comprises at least one handle panel for providing said second ply of said at least one reinforced handle structure.

2. Claims 10-14 and 16-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Kaisha et al. (FR2456044) as provided by applicant.

Re claim 10, Kaisha discloses a carton (figs 1-6) comprising an open top container (A), a top closure (B) connected to said open top container and at least one reinforced handle structure (figs 4, 5), said open top container and said top closure being formed from separate blanks respectively (figs 1, 2), wherein a first ply (top portion of 1-5) of said at least one reinforced handle structure is provided by said open top container, a second ply (9) of said at least one reinforced handle structure is provided by said top closure, and a third ply (11) of said at least one reinforced handle structure is provided by one of said top closure (B) and said open top container.

Re claim 11, Kaisha discloses that said top closure comprises a hinged handle panel (at 10) for providing said second ply (9), said handle panel is secured in flat face contact with an inner face of said first ply (inner face of 1-5) of said at least one reinforced handle structure (figs 4, 5).

Re claim 12, Kaisha discloses that said third ply (11) of said at least one reinforced handle structure is secured in flat face contact with an outer face of said first ply (figs 4, 5).

Re claim 13, Kaisha discloses that said third ply (11) of said at least one reinforced handle structure is hinged to said second ply (9) of said at least one reinforced handle structure, and wherein a hinged connection (at 10) between said second ply and said third ply provides a means for aligning said top closure with said open top container (aligned at 10 in figs 4, 5).

Re claim 14, Kaisha discloses that said first ply (top portion of 1-5) of said at least one reinforced handle structure is disposed between, and in face contacting relationship with, said second and third plies (fig 4).

Re claim 16, Kaisha discloses a two-part blank (figs 1, 2) for forming a carton (figs 4), said blank comprising a first part (A) for forming an open top container and a second part (B) separate from said first part to form a top closure of said open top container, wherein said first and second part are provided with panels (top portion of 1-5, 9, 11) for forming at least one reinforced handle structure when the carton is erected (figs 4, 5), said at least one reinforced handle structure is of at least three ply construction (three ply in figs 4, 5), a first ply (top portion of 1-5) of said at least one reinforced handle structure is provided by said first part (A), a second ply (9) of said at least one reinforced handle structure is provided by said second part (B), and a third ply (11) of said at least one reinforced handle structure is provided by one of said first and second parts (B).

Re claim 17, Kaisha discloses that said first part (A) comprises a plurality of walls, said first ply (top portion of 1-5) of said at least one reinforced handle structure being provided by one of said walls of said first part (fig 1).



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Re claim 18, Kaisha discloses that said second part (B) comprises at least one handle panel (9-11) for providing said second ply (9) of said at least one reinforced handle structure.

### ***Claim Rejections - 35 USC § 103***

3. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kaisha as applied to claim 10 above, and further in view of Bernhardt et al. (3,285,496).

Re claim 15, Kaisha discloses the claimed invention above for claim 10, with the exception of the following claimed limitation taught by Bernhardt: an open top container (container portion in figs 1-5) comprises a plurality of walls (11, 12, 13), at least one of said walls of said open top container has a top flap (13) hingedly connected thereto and folded downwardly into a open top container, wherein a top closure (closure I figs 1-5) comprises an engaging tab (17) for engaging said top flap (13) such that said engaging tab (17) is disposed in face contacting relationship with at least one of said at least one wall and said top flap to lock said top closure at a recessed position below a top of said open top container (fig 5). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Kaisha in view of Bernhardt to provide an improved sealing feature that is easily used with the container (Bernhardt col. 2: 1-10).

### ***Conclusion***

Applicants are respectfully reminded that they and other individuals, as set forth in 37 CFR 1.56, have a duty to bring to the attention of the Office any material prior art

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or other information cited or brought to their attention in any related foreign application.

See MPEP 2001.06(a).

The individuals covered by 37 CFR 1.56 cannot assume that the examiner of a particular application is necessarily aware of other applications which are “material to patentability” of the application in question, but must instead bring such other applications to the attention of the examiner. See *Dayco Prod., Inc. v. Total Containment, Inc.*, 329 F.3d 1358, 1365-69, 66 USPQ2d 1801, 1806-08 (Fed. Cir. 2003). For example, if a particular inventor has different applications pending in which similar subject matter but patentably indistinct claims are present that fact must be disclosed to the examiner of each of the involved applications. Similarly, the prior art references from one application must be made of record in another subsequent application if such prior art references are “material to patentability” of the subsequent application. See *Dayco Prod.*, 329 F.3d at 1369, 66 USPQ2d at 1808. See MPEP 2001.06(b).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANDREW PERREAULT whose telephone number is (571)270-5427. The examiner can normally be reached on Monday - Friday, 8:00 AM - 5:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ehud Gartenberg can be reached on (571)272-4828. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/A. P./

Examiner, Art Unit 3728

/Ehud Gartenberg/

Supervisory Patent Examiner, Art Unit 3728